

**UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

Broadcast Localism Notice Of Inquiry) FCC Docket 04-233

**Broadcast Localism Task Force) FCC Docket RM-10803
(Later consolidated
with FCC Docket
04-233)**

**MOTION TO ACCEPT LATE-FILED SUPPLEMENTAL WRITTEN
COMMENTS,
PLUS THE SUPPLEMENTAL WRITTEN COMMENTS THEMSELVES,
BY DON SCHELLHARDT, ESQUIRE**

I am Don Schellhardt: an attorney, specializing in Government Relations and family law, and a writer. These February 14, 2005 Supplemental Written Comments are an adjunct to -- and, in fact, should be read in conjunction with -- my Written Comments of February 9, 2005.

The earlier Written Comments placed On The Record, in FCC Dockets 04-233 and RM-10803, the text of my recent complaint to the FCC's Enforcement Office regarding the repeated airing of the racially abusive "Tsunami Song" by WQHT-FM and other arms of Emmis Communications. These new Written Comments place On The Record, in the same Dockets, additional information that was sent to the Enforcement Office today.

First:

As with my Written Comments of February 9, I move for acceptance of this filing in spite of its arrival after the filing deadline in Docket 04-233. The events discussed herein occurred after the deadline had passed.

Second:

As with my Written Comments of February 9, the conveyed information regarding the behavior of Emmis Communications is relevant to the question of whether large, national or international broadcasters can be expected to act responsibly solely on the basis of self-regulation and presumed positive responses to “market forces”. The recent behavior of Emmis Communications is another piece of compelling evidence that *more* government oversight, with *more* sensitivity to the listening public -- and, ideally, *less* consolidation of media ownership -- is needed.

Respectfully submitted,

Don Schellhardt, Esquire

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I hereby certify, on February 14, 2005, that I have sent copies of these Supplemental Written Comments to: (1) John M. Smulyan, Chairman and CEO, Emmis Communications, Indianapolis, IN; and (2) Barry Mayo, General Manager, "Hot 97" WQHT-FM, New York, NY.

Don Schellhardt, Esquire

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February 14, 2005

William Davenport
Chief, Investigations and Hearings Division
Enforcement Bureau
FEDERAL COMMUNICATIONS COMMISSION
445 12th Street S.W.
Washington, DC 20554

**RE: Supplemental Information Regarding Request For Major Fine
Against EMMIS COMMUNICATIONS (Problem #01102644)**

Dear Mr. Davenport:

My name is Don Schellhardt. I am a Government Relations and family law attorney, and a writer. I am also a co-founder of THE AMHERST ALLIANCE, although I am writing to you on my own behalf, rather than as a representative of that organization.

On February 8, 2005, I filed with your office, electronically, a letter of complaint against EMMIS COMMUNICATIONS for its repeated airing of "The Tsunami Song" over WGHT-FM and affiliated outlets. The letter also conveyed a request for a major fine against Emmis Communications, exceeding in size the FCC's recent fine against the broadcasters who aired Janet Jackson's "wardrobe malfunction".

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“The Tsunami Song” may not have sexual content, but it is certainly indecent. Its lyrics gleefully report the deaths of “chinks” and “bitches”, while God laughs.

In my continuing research on Emmis Communications, I have discovered additional information which should be placed On The Record, for review as an aggravating factor, when the size of the FCC’s fine against Emmis Commuications is considered. The primary source for this information is the September 21, 2004 FMQB story entitled “Indecency Crusader Explains Emmis Flip-Flop”, found at <http://fmqb.com/Article.asp?id=40099>)

In August of 2004, Emmis Communications entered into a settlement agreement with the FCC. The resulting consent decree resolved “indecenty complaints” that had been filed by David Edward Smith and Citizens For Community Values, as well as Julie Cordry and Concerned Women Of America. In order to “wipe the slate clean” of these charges, Emmis Communications agreed to pay \$300,000.

There are two reasons why this event is relevant to the current complaint.

***First*, the FCC should note that “the ink was still drying” on the settlement when WQHT-FM, and other outposts of the Emmis Communications empire, began airing “The Tsunami Song”. The song began its 8-day run on January 13, 2005: only 5 months after Emmis Communications signed its “indecenty” settlement agreement. Obviously, \$300,000 was not nearly enough money to constitute an effective learning experience for Emmis Communications.**

***Second*, shortly after the settlement agreement had been signed, David Edward Smith and his group repudiated it and sought its invalidation by the FCC. Among other assertions, they claimed that Emmis Communications had acted in bad faith by claiming that one of the offending disc jockeys had been “fired”. In fact, they claim, the disc jockey was actually moved to a *different* radio station owned by Emmis Communications (through Emmis Broadcasting) in a *larger* market. The shift from a St. Louis station to a Chicago station was, functionally, a promotion.**

Your office, of course, has been well aware of these developments. Still, I am placing this information officially On The Record, in the context of *current* complaints against “The Tsunami Song”, in order to assure that *past* conduct by Emmis Communications is fully and formally considered.

Don Schellhardt, Esquire
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Respectfully submitted,

Don Schellhardt, Esquire
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CC: FCC Chairman Michael Powell
FCC Commissioner Kathleen Abernathy
FCC Commissioner Jonathan Adelstein
FCC Commissioner Michael Copps
FCC Commissioner Kevin Martin

FCC Docket 04-233 (Broadcast Localism NOI)

House Minority Leader Nancy Pelosi (D-CA)
(Don Schellhardt's Representative in Congress)

Emil Guillermo, Columnist, ASIAN WEEK
Ted Fang, Editor, ASIAN WEEK
Kai Yu, Founder, ASIAN MEDIA WATCH
Stephanie Loveless, President, THE AMHERST ALLIANCE

Jeffrey M. Smulyan, Chairman and CEO, Emmis Communications
Barry Mayo, General Manager, WQHT-FM